

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CAROL D. LITTLE,)
)
Plaintiff,)
)
)
v.)
) Case No. 2:16-cv-2289-JTF-dkv
)
)
THE SOCIAL SECURITY)
ADMINISTRATION, and)
CAROLYN W. COLVIN,)
Commissioner)
)
Defendants.)

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND ORDER DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE

Before the Court is Plaintiff's appeal from the denial of SSI benefits by the Social Security Administration pursuant to 42 U.S.C. § 405 that was filed on April 28, 2016. (ECF No. 1). Plaintiff, proceeding *pro se*, simultaneously filed a motion to proceed *in forma pauperis*. (ECF No. 2). The matter was referred to the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B)-(C) and Fed. R. Civ. P. 1.

During the *in forma pauperis* screening process, the Magistrate Judge conducted a review of Plaintiff's Complaint and her financial affidavit as required under 28 U.S.C. § 1915(e)(2). On May 9, 2016, the Magistrate Judge entered an Order and Report and Recommendation. (ECF No. 5). Finding that Plaintiff had demonstrated an inability to pay the civil filing fee, the Magistrate Judge granted Plaintiff leave to proceed *in forma pauperis*, but recommended that the Court dismiss the action under Fed. R. Civ. P. 12 (b)(6). To date, Plaintiff has not filed any

objections to the Magistrate Judge's report and recommendation. For the following reasons, the Court finds that the Magistrate Judge's report and recommendation should be adopted and the case Dismissed.

I. FACTUAL HISTORY

The Magistrate Judge submitted proposed findings of fact concerning Little's appeal of the Agency's final denial of her application for back pay dated to 2011 and SSI benefits. (ECF No. 5). Little's appeal asserts that the Administrative Judge acted unethically by compelling her to dismiss her claim. She now requests that this Court allow her to amend her complaint and remand the matter to the Agency for a hearing on her SSI claim. (ECF No. 1). The Court adopts the Magistrate Judge's proposed factual findings as the brief factual history of this case.

II. STANDARD OF REVIEW

As noted in the Magistrate Judge's report and recommendation, because Plaintiff is proceeding *in forma pauperis*, 28 U.S.C. § 1915 (e)(2) requires a district court to dismiss any case brought under this section that fails to state a claim on which relief may be granted. *Moniz v. Hines*, 92 Fed. Appx. 208, 210 (6th Cir. 2004). A United States District Court Judge may refer certain dispositive pretrial motions to a United States Magistrate Judge for submission of proposed findings of fact and conclusions of law for disposition by the District Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and (C); *Brogue v. Astrue*, Case No. 12-cv-14220, 2012 WL 6201357, *1 (E.D. Mich. Dec. 12, 2012); *Brown v. Wesley Quaker Maid, Inc.*, 771 F.2d 952, 957 (6th Cir. 1985). The District Judge may accept, reject or modify in whole or in part, the Magistrate's proposed findings and recommendations. While most actions by a Magistrate Judge are reviewed for clear error, dispositive recommendations to the district judge are reviewed *de novo*. *Thomas v. Arn*, 474 U.S. 140, 141-42 (1985). The district judge must review and issue a *de novo*

determination of any part of the Magistrate Judge's report and recommendation that has been properly objected to. *Baker v. Peterson*, 67 Fed. App'x 308, 310 (6th Cir. 2003) and Fed. R. Civ. P. 72(b)(3). In this case, there are no objections.

III. ANALYSIS

Plaintiff asserts on page two of her complaint, that she resides in the state of Tennessee. However, on page three, Plaintiff lists her legal residence as 2072 Benton St., Memphis, TN 38016 and her mailing address as 209 Amy Circle, Marion, AR 72364. (ECF No. 1, pp. 2-3). In her *in forma pauperis* application, Plaintiff swears under oath that she is a legal resident of Marion, Arkansas. (ECF No. 2, p. 5 ¶ 12).

The Magistrate Judge correctly noted that under the Social Security Act, Little may only seek review of the Agency's final decision in the judicial district in which she resides, which according to the complaint and her financial affidavit is Arkansas, rather than Tennessee. *Wright v. Commissioner of Social Sec.*, No. 07-CV-15403-DT, 2008 WL 2246043, *2 (E.D. Mich., May 30, 2008); *Murphy v. Department of Treasury*, No. 14-1775-UNA, 2014 WL 5395758, *1 (D.C.D.C. Oct. 23, 2014), and *Ryan v. Brady*, 776 F. Supp. 1, 2 (D.D.C. 1991), *aff'd* on other grounds, 978 F.2d 744 (D.C. Cir. 1992). Finding a discrepancy in the pleadings regarding Plaintiff's residence, the Magistrate Judge recommended that the undersigned Court dismiss this matter for lack of venue under 28 U.S.C. § 1391(b) and 42 U.S.C. § 405(g). (ECF No. 5). The Magistrate Judge also properly recommended dismissal of the case without prejudice, rather than transfer, because the complaint lacks the essential information to determine whether Little has exhausted her administrative remedies. *Wright*, 2008 WL 2246043 at *2-*3 citing *Norwood v. Kirkpatrick*, 349 U.S. 29, 31-33 (1955) (transfer of venue is a matter within the sound discretion

of a district court). The Court finds the Magistrate Judge's proposed conclusions of law in this case are correct and should be adopted in full.

CONCLUSION

Upon a *de novo* review of the report and recommendation, the Court finds the Complaint should be dismissed without prejudice. Little has failed to respond to or object to any of the Magistrate Judge's proposed findings of fact or conclusions of law in this case. As such, the Magistrate Judge's report and recommendation is adopted in full and the complaint dismissed without prejudice for failure to state claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

IT IS SO ORDERED this 7th day of June, 2016.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE